

Recent key developments in the area of Spanish financial regulation

Prepared by the Regulation and Research Department of the Spanish Confederation of Savings Banks (CECA)

Organic Law 2/2024 on equal and balanced gender representation (Official State Gazette: 2 August 2024)

The purpose of this Organic Law is to transpose Directive (EU) 2022/2381 on improving the gender balance among directors of listed companies and related measures into Spanish law and extend the gender balance requirements to other areas of society. To that end it modifies several laws to introduce minimum thresholds for boardroom representation by the underrepresented sex. It took effect 20 days after its publication.

Firstly, it amends the Corporate Enterprises Act (Royal Legislative Decree 1/2010), in order to introduce, in broad terms, the following new requirements:

- Listed companies must ensure that the underrepresented sex hold at least 40% of all board director positions. The number of all director positions deemed necessary to achieve the objective laid down shall be the number closest to the proportion of 40%, but not exceeding 49%. Other highlights:
 - If this objective is not met due to unanticipated developments (death, loss of ability to serve, legal disqualification, resignation), the proportion must be re-established when appointing the new director, first via co-option and later definitively at the first general meeting held after the vacancy arises.
 - Listed companies which do not achieve the objective must adjust the process for selecting candidates.
 - Listed companies must inform their shareholders about the measures taken to ensure balanced gender representation

in their boardrooms at their general meetings, disclosing any penalties deriving from failure to accomplish the objectives.

- Annually, the boards of listed companies must prepare and publish, as part of their sustainability reports, and on their websites, information about boardroom representation by the underrepresented sex. That information must be published in a readily accessible manner and submitted to the CNMV. The information must be disclosed by means of an “other relevant information” notice simultaneously with publication of the companies’ annual corporate governance report and annual director remuneration report and must be made continuously available on their websites and via the CNMV.
- Listed companies must ensure that the underrepresented sex hold at least 40% of their senior officer positions. Their annual reports must provide an account of their compliance with this objective and in the event of non-compliance, a detailed explanation of the underlying reasons and the measures taken to achieve it in the following and subsequent years.
- The above regulations, except for that related to submission of the annual information to the CNMV in the case of unlisted companies, shall also apply to certain public interest entities (those with over 250 employees, annual turnover of over 50 million euros or total assets of more than 43 million euros).

Secondly, it amends the Securities Markets and Investment Services Act (Law 6/2023) to specify that the penalties for failing to meet the requirements laid down in the Corporate

Enterprises Act around boardroom gender balance shall qualify as a “serious offence” for securities market law purposes.

The CNMV and Instituto de las Mujeres (Women’s Institute) are the bodies responsible for promoting, analysing, monitoring and supporting gender balance at listed companies and public interest entities (PIEs). In the case of PIEs they will do so in collaboration with the equivalent bodies at the regional government level. In the case of the boards of insurance companies, those duties will fall to the insurance sector watchdog (DGSFP).

The new legislation introduces additional amendments in order to extend the requirements around gender-balanced representation to other areas of society (Organic Law 5/1985, of 19 June 1985, on the General Electoral Regime; the organic laws regulating the constitutional bodies (specifically the Constitutional Court, State Council, Court of Auditors, Fiscal Council and General Council of the Judiciary); Law 40/2015, of 1 October 2015, on the Public Sector Legal Regime; Law 2/1974, of 13 February 1974, on Professional Bodies; Law 17/2006, of 5 June 2006, on state-owned radio and television; Organic Law 11/1985, of 2 August 1985, on Union Freedom; Legislative Royal Decree 2/2015, on 23 October 2015, enacting the consolidated text of the Workers Statute; Organic Law 2/2023, of 22 March 2023, on the University System; Law 50/2002, of 26 December 2002, on Foundations; Law 43/2015, of 9 October 2015, on the Third Sector; and Law 5/2011, of 29 March 2011, on the Social Economy, in all cases to ensure the principle of gender-balanced representation). Notably, the requirements apply to: (i) the representative, governing and administrative bodies of business associations entitled to negotiate collective agreements; and (ii) the governing and representative bodies of foundations with more than 125 employees and an annual budget of over 20 million euros. In both cases, appointments must be made following the principle of equal and balanced gender representation so that the members of either sex do not exceed 60% or fall short of 40%. Failure to uphold the principle must be duly justified.

The Organic Law stipulates the following timeframe for its application:

- For listed companies traded as part of the IBEX-35: from 30 June 2026.
- For all other listed companies: from 30 June 2027.
- Meanwhile, public interest entities are required to achieve 33% representation by the underrepresented sex by 30 June 2026 and lift it to 40% by 30 June 2029.
- For business associations, foundations, unions, and third sector organisations: from 30 June 2028.